



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DANILO DEL VALLE, an
Individual, and JENNIFER DEL
VALLE, an Individual,

Plaintiffs,

vs.

INDYMAC FEDERAL BANK,
F.S.B., a Delaware Corporation;
NDEX WEST, LLC, a Delaware
Corporation; GMAC MORTGAGE,
LLC, a Delaware Corporation;
ALLIANCE BANCORP, a California
Corporation, and DOES 1 through 10,
inclusive,

Defendants.

Case No. 09-cv-01940 JW


**ORDER DENYING DEFENDANT
GMAC'S MOTION TO DISMISS
AS MOOT**

Presently before the Court is Defendant GMAC's Motion to Dismiss. (Docket Item No. 9, 15.) Defendant originally filed this Motion on July 22, 2009 and upon reassignment of the case to this Court, Defendant renoticed its Motion on August 3, 2009. On October 5, 2009, Plaintiffs filed an Amended Complaint. (Docket Item No. 27.)

Rule 15(a) provides that a party may amend his pleading once as a matter of course at any time before a responsive pleading is served. A motion to dismiss is not a responsive pleading within the meaning of Rule 15(a). Fed. R. Civ. P. 15(a); Allwaste, Inc. Hecht, 65 F.3d 1523, 1530 (9th Cir. 1995).

Plaintiffs' October 5 Amended Complaint is their first Amended Complaint. Accordingly, Defendant GMAC's Motion to Dismiss is denied as moot. The October 26, 2009 hearing on the Motion is VACATED.

Dated: October 20, 2009


JAMES WARE
United States District Judge